

1 BILL NO. S-82-11-09

2 SPECIAL ORDINANCE NO. S-213-82

3 AN ORDINANCE approving Street Improvement
4 Resolution No. 5941-82, 1982 Flood Damage
5 Repair, with Moellering Construction
6 Company, Inc., in connection with the
7 Board of Public Works.

8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
9 FORT WAYNE, INDIANA:

10 SECTION 1. That a certain Contract dated September 8,
11 1982, between the City of Fort Wayne, Indiana, by and through
12 its Mayor and the Board of Public Works and Moellering Construction
13 Company, Inc., for:

14 1982 Flood Damage Repair in the Northside Drive,
15 Oswego, Baltes, and Griswold Drive Area, including
16 Federal Emergency Management Agency Survey Reports
17 No. 041864, 041860, 041853, and 041856;

18 under Board of Public Works Street Improvement Resolution No.
19 5941-82, involving a total cost of Ten Thousand Five Hundred
20 Seventy-Nine and 95/100 Dollars (\$10,579.95), all as more partic-
21 ularly set forth in said Resolution and Contract, and which is
22 on file with the Office of the Board of Public Works and is by
23 reference incorporated herein, made a part hereof, and is hereby
24 in all things ratified, confirmed and approved. Two copies of
25 said Contract are on file with the Office of the City Clerk and
26 made available for public inspection, according to law.

27 SECTION 2. That this Ordinance shall be in full force
28 and effect from and after its passage and any and all necessary
29 approval by the Mayor.

30 APPROVED AS TO FORM
31 AND LEGALITY

32 
Councilmember


Bruce O. Baxberger, City Attorney

Read the first time in full and on motion by Stier, seconded by Eisbart, and duly adopted, read the second time by title and referred to the Committee Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATE: 11-9-82

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Stier, seconded by Eisbart, and duly adopted, placed on its passage. PASSED (~~Lost~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 11-23-82

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. S-213-82 on the 23th day of November, 1982.

ATTEST:

(SEAL)

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th day of November, 1982, at the hour of 11:30 o'clock A.M., E.S.T.

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 24th day of November 1982, at the hour of 9 o'clock A.M., E.S.T.

WIN MOSES, JR.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-11-09

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN
ORDINANCE approving Street Improvement Resolution No. 5941-82, 1982
Flood Damage Repair, with Moellering Construction Company,
Inc., in connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

JAMES S. STIER, CHAIRMAN

BEN A. EISBART, VICE CHAIRMAN

VICTURE L. SCRUGGS

MARK E. GUAQUINTA

DONALD J. SCHMIDT

James S. Stier
Ben A. Eisbart
Victure L. Scruggs
Mark E. Guainta
Donald J. Schmidt

11-23-82

CONCURRED IN

DATE 11-23-82 VEREDMAN, CITY CLERK

CONTRACT

73-81-11
9/8/82

This Agreement, made and entered into this 8 day of Sept, 1982

by and between ----- MOELLER CONSTRUCTION COMPANY, Inc. -----
----- P.O. Box 11168, Ft. Wayne, Indiana 46856 -----

hereinafter called "Contractor" and the City of Fort Wayne, Indiana, a municipal corporation, herein after called "City," under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all amendatory and supplementary acts thereto, WITNESSETH: That the Contractor covenants and agrees to ~~XXX~~ Improvement Resolution No. 5941-82

~~XXXX~~ repair 1982 Flood Damage in the Northside Drive, Oswego, Baltes, and Griswold Drive Area.

This Resolution includes: DSR #041864, DSR #041863, DSR #041860, DSR #041853, DSR #041856.

by grading and paving the roadway to a width of XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX

upon a foundation and with curbing as fully set out in the specifications hereinafter referred to, in a good and workmanlike manner and to the entire satisfaction of said City, in accordance with Improvement Resolution No. 5941-82 attached hereto and by reference made a part hereof.

At the following prices:

DSR #041864 Hot Asphalt Concrete Binder	Twenty-seven dollars and fifteen cents per ton	27.15
DSR #041863 Hot Asphalt Concrete Binder	Twenty-eight dollars and no cents per ton	28.00
DSR #041860 Hot Asphalt Concrete Patching	Forty-seven dollars and forty cents per ton	47.40
DSR #041853 Pavement Removal	Eight dollars and eighty-five cents per square yard	8.85
Hot Asphalt Concrete Base #53	Twenty-seven dollars and seventy cents per ton	27.70
Hot Asphalt Concrete Surface A-2	Eighty-two dollars and twenty-five cents per ton	82.25
DSR #041856 Hot Asphalt Concrete Surface Patching	Thirty-three dollars and ninety cents per ton	33.90
Total	Ten thousand, five hundred and seventy-nine dollars and ninety-five cents	\$10,579.95

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5941-82 the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally

and in all respects completed on or before Sept. 30, 1982, and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of ~~\$2500~~ \$100.00 for each and every day after said date _____, 19____ until said work is finally completed and ready for acceptance by the City.

It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 8

day of Sept., 1982

ATTEST:

Corporate Secretary

MOELLERING CONSTRUCTION COMPANY, Inc.

BY:

ITS:

President

Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

ATTEST:

Secretary and Clerk

Its Board of Public Works and Mayor.

ASSOCIATE CITY ATTORNEY

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under municipal contracts, is attached and incorporated herein by reference.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

----- MOELLERING CONSTRUCTION COMPANY -----

(Name of Contractor)

----- P.O. Box 11168, Ft. Wayne, Indiana 46856 -----

(Address)

a Corporation, hereinafter called Principal,
(Corporation, Partnership or Individual)

and United Pacific Insurance Company
(Name of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held and firmly bound unto the City of Fort Wayne, an Indiana Municipal Corporation in the penal sum of TEN THOUSAND, FIVE HUNDRED AND SEVENTY-NINE DOLLARS AND NINETY-FIVE CENTS for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 8 day of Sept, 1982, for the construction of:

Improvement Resolution No. 5941-82

To repair 1982 Flood Damage in the Northside Drive, Oswego, Baltes, and Griswold Drive Area.

This Resolution includes: DSR #041864, DSR #041863, DSR #041860, DSR #041853, DSR #041856.

at a cost of TEN THOUSAND, FIVE HUNDRED AND SEVENTY-NINE DOLLARS AND NINETY-FIVE CENTS (\$10,579.95), all according to Fort Wayne Street Engineering Department plans and specifications.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subconstructor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in 3 counter-
(number)
parts, each one of which shall be deemed an original, this 8 day of
Sept, 1979.
82

(SEAL)

ATTEST:

[Signature]
(Principal) Secretary

MOELLERING CONSTRUCTION COMPANY pkc
Principal

BY [Signature]
President
(Title)

(Address)

Witness as to Principal

(Address)

United Pacific Insurance Co.
Surety
BY [Signature]
Attorney-in-Fact
(Authorized Agent)

Roger Curry
P.O. Box 55811
(Address)

Indianapolis, IN 46205

[Signature]
Witness as to Surety
P.O. Box 55811
(Address)
Indianapolis, IN 46205

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute bond.

PERFORMANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that we MOELLERING CONSTRUCTION CO.
as Principal, and the United Pacific Insurance Company
_____, a corporation organized under the laws of the
State of _____, and duly authorized to transact business in the
State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne,
Indiana, an Indiana Municipal Corporation in the sum of TEN THOUSAND, FIVE
HUNDRED AND SEVENTY-NINE DOLLARS AND NINETY-FIVE CENTS -----

(\$ 10,579.95-----), for the payment whereof well and truly to be made,
the Principal and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents. The
condition of the above obligation is such that

WHEREAS, the Principal did on the 8 day of Sept, 1982,
enter into a contract with the City of Fort Wayne to construct

Improvement Resolution No. 5941-82

To repair 1982 Flood Damage in the Northside Drive, Oswego, Baltes, and Griswold
Drive Area.

This Resolution includes: DSR #041864, DSR #041863, DSR #041860, DSR #041853,
DSR #041856.

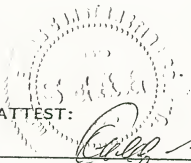
at a cost of \$ 10,579.95-----, according to certain plans and specifications
prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement
provides:

1. That said improvement shall be completed according to said plans and
specifications, and contractor shall warrant and guarantee all work, mater-
ial, and conditions of the improvement for a period of three (3) years from
the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after comple-
tion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifica-
tions, and repairs as required by the City within thirty (30) days after
notice.

WHEREAS, said Surety, for value received, hereby stipulates and agrees, that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.


ATTEST: *Carol Allen*
Secretary
(Title)

*If signed by an agent, power of attorney must be attached

MOELLERING CONSTRUCTION COMPANY, Inc.
(Contractor)
BY: *W. Moelling*
ITS: President

United Pacific Insurance Co.
Surety
*BY: *Rogee Curry*
Authorized Agent
(Attorney-in-Fact)
Rogee Curry



TITLE OF ORDINANCE Street Resolution #5941-82, Flood Damage Repair

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

5-82-11-09

SYNOPSIS OF ORDINANCE Street improvement repair 1982 Flood Damage in the Northside

Drive, Oswego, Baltes, and Griswold Drive Area. This resolution includes Federal

Emergency Management Agency Survey Report Nos. #041864, 041863, 041860, 041853,

and 041856. Contract was awarded to Moellering Construction Company, Inc.

Prior Approval Was Obtained August 3, 1982.

EFFECT OF PASSAGE to repair damages occurred by flood

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$10,579.95

ASSIGNED TO COMMITTEE